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ARIZONA CORPORATION COMMISSION

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September 10, 2008

Mr. Don Brandt
President and CEO
Arizona Public Service
400 No. Fifth Street
M.S. 9042
Phoenix, AZ 85004

Mr. James Pignatelli
President and CEO
Tucson Electric Power
P.O. Box 711
Tucson, AZ 85702

Re: Delays in Distributed Solar Projects Caused by Change in Law Contract Language.

Dear Sirs:

It has come to my attention that certain contract language requirements of Arizona Public Service ("APS") and Tucson Electric Power ("TEP") may be delaying the construction of several prominent distributed solar generation projects. Most disturbingly, it is my understanding that this language may be stalling the construction of the two Megawatts of solar energy planned at Arizona State University. I am writing to request assurances that APS and TEP are committed to advancing these worthy solar projects, and to removing this onerous language absent a compelling argument in favor of its retention.

As you know, the ASU solar project¹ was announced by APS and ASU in June, and greeted with much deserved fanfare. However, since then, APS has insisted on including a change in law provision in its Solar Renewable Energy Credit Purchase Agreement Grid-Tied Photovoltaic System ("CPA") contracts with the vendors who will build the systems that will provide renewable energy to businesses, municipalities, and universities like ASU.² Third party project financiers of the two Megawatt ASU project have expressed uneasiness with the provisions currently contained within APS' CPA and have stated that they cannot move forward on

¹ This is to be the first segment of 7 Megawatts to be installed on ASU campuses.

² These CPA's, often associated with Performance Based Incentive payments "PBI's" are paid through Renewable Energy Standard funds provided by ratepayers, and are becoming a major vehicle by which utilities spend RES monies and meet the state's new Renewable Energy Standard ("RES") requirement of 15 percent renewable energy by the year 2025. APS has stated that it has contracted for \$15 million in renewable energy pursuant to PBI arrangements.

construction of the ASU solar project with this contract language in place, as it would allow APS to forego payment of the performance-based incentives called for under the contract if future alterations were made to Arizona's Renewable Energy Standard ("RES") – a so-called "change in law". Interestingly, such language has never before been deemed necessary by APS. For instance, APS did not insist on including such a change in law provision in the agreement it reached – and that was approved by this Commission – to purchase energy from Frito-Lay's Casa Grande solar project. Yet, for reasons yet to be fully explained by APS, this language has been added to APS' standard CPA contract.

Such language shifts nearly all of the risks associated with a future change in law from Arizona's largest utility to the third party entities that are building distributed renewable energy systems pursuant to a CPA. While I believe that the risks associated with a change in the Renewable Energy Standard are small – the RES is the popular, fully implemented policy of the State of Arizona and this Commission – placing whatever risks are associated with a future change in law on the shoulders of entities that are much smaller than APS is an obvious hindrance to their ability to engage in commercial renewable energy transactions. Further, it would appear that, in the very unlikely event that the RES was ever altered or repealed, APS would have the ability to come to the Commission and seek continued cost recovery of past contracts that were entered into in a good faith effort to meet the requirements of a state mandate.

While TEP's current CPA does not have a similar change in law provision I am concerned that other provisions in TEP's document may be utilized for a similar purpose. Accordingly, I ask that TEP examine their agreement and remove any obstacles akin to APS' change in law provision.

I understand that such change in law provisions have been proposed by utilities in association with third party renewable energy installations in other states, and that the utilities ultimately determined not to utilize these change in law measures after it became clear that the language threatened to scuttle the projects. For instance, the recent Denver International Airport solar project negotiation required parties to address these provisions and resolve the concerns of third party entities. And, it is my understanding that similar change in law language once stood as a barrier to the 15 MW solar array at Nevada's Nellis Air Force Base, and was removed in order to allow that project to proceed.

It would be unfortunate if superfluous contract language became an obstacle to the implementation of large-scale distributed solar projects like the one planned by ASU. Such projects are not only vital to organizations like ASU that have stepped forward to install solar, but they will prove critical to the utilities' efforts to meet the Renewable Energy Standard in the coming years.

Therefore, I request that you halt the use of such change in law provisions, or explain to this Commission why they are necessary, and what steps you are taking to ensure that they do not harm the ability of universities, businesses and individuals to benefit from renewable energy.

I look forward to your timely responses.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Kris Mayes', with a long horizontal flourish extending to the right.

Kris Mayes
Commissioner

Cc: Chairman Mike Gleason
Commissioner William A. Mundell
Commissioner Jeff Hatch-Miller
Commissioner Gary Pierce
Michael Crow, President, Arizona State University
Brian McNeil
Ernest Johnson
Rebecca Wilder